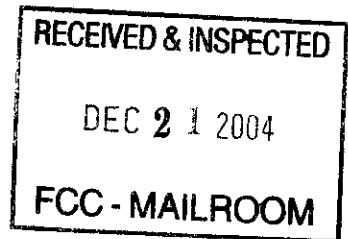




# Cochise County Library District

DRAWER AK  
BISBEE, ARIZONA 85603



December 17, 2004

Federal Communications Commission  
Office of the Secretary  
445 - 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Sir:

CC Docket No. 02-6.

This is a Request for Review of the Schools & Libraries Division's October 25, 2004 Decision on our appeal of their April 8, 2004 Commitment Adjustments, all of which applied to Cochise County Library District (Billed Entity Name), which is Billed Entity Number 143066.

The four SLD letters dated October 25 *denied in full* our appeals regarding the April 8 letters, which **rescinded** e-rate discounts previously granted for funding years 2 through 5 on the Internet Access bill for the public libraries in Cochise County from the University of Arizona's CCIT Dept., for a total of **more than \$14,000**.

<u>FRN#</u>	<u>Funding Year</u>	<u>471#</u>	<u>Amount of discount</u>
203031	1999-2000 (Year 2)	135658	\$3,327.48
382410	2000-2001 (Year 3)	176372	\$3,250.63
638779	2001-2002 (Year 4)	250814	\$3,868.32
821152	2002-2003 (Year 5)	313496	\$3,723.72

The CCIT contract was signed 12/17/1996, and renewed automatically every year for additional one year terms unless terminated. I am attaching a copy of the contract as Attachment #1.

The first year (1998), I filed two 470s. On Form 470 #1280000069261, I reported the CCIT Internet service by checking the box that said "Check if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s)..." A copy of Block 3 #10 from this 470 is Attachment #2.

No. of Copies rec'd 0  
List ABCDE

through 5, I certainly thought that I was proceeding correctly. I was not trying to circumvent the rules---I was trying hard to *follow* the bold print!

The October 25 SLD letters of denial further state that my Form 471 for that first year listed a contract termination date of 12/17/98. It is true that I did list this date on both the 470 and 471, but it was not because I thought that the contract actually terminated. I don't have any notes on this particular issue, but I think that I had called the SLD help line, which I did a lot in those early days, and was advised to use an actual date---the annual renewal date. I was not comfortable with this decision, though, as you can see from what follows.

The following year (Year 2), when I filed the 471 again (3/26/1999), I wrote "ongoing" in the contract expiration column for the CCIT contract. 471 applications for years earlier than 2000 are unfortunately not accessible online, so I am including a copy of my handwritten copy of Block 5 for FRN 203031 as Attachment #7. A month later, I wrote to the SLD, asking for verification, for future reference, on the issue of how I should indicate that a contract has no termination date. According to my notes on the letter, an SLD staff person named Richard Nyquist called on 4/23/99 and advised me to use the *end of the funding period*. A copy of this letter with my handwritten notes is Attachment #8. So for Year 3's 471, which I entered online, I entered 6/30/2001, which was the end of the funding period. As I recall, it was not even possible to enter a word such as "ongoing" in the *online* 471---I had to enter a date. See line 20 from 471# 176372 below.

<b>FRN: 382410</b>		<b>FCDL Date:</b>	
<b>11. Category of Service:</b> Telecommunications Service		<b>12. 470 Application Number:</b> 828410000069452	
<b>13. SPIN:</b> 143010150		<b>14. Service Provider Name:</b> CCIT Telecommunications, Univeristy of Arizona	
<b>15. Contract Number:</b> 21271		<b>16. Billing Account Number:</b> 000234	
<b>17. Allowable Contract Date:</b> 04/07/1998		<b>18. Contract Award Date:</b> 12/17/1996	
<b>19a. Service Start Date:</b> 07/01/2000		<b>19b. Service End Date:</b>	
<b>20. Contract Expiration Date:</b> 06/30/2001			
<b>21. Attachment #:</b> 6		<b>22. Block 4 Worksheet No.:</b> 172567	
<b>23a. Monthly Charges:</b> \$351.80		<b>23b. Ineligible monthly amt.:</b> \$0.00	
<b>23c. Eligible monthly amt.:</b> \$351.80		<b>23d. Number of months of service:</b> 12	
<b>23e. Annual pre-discount amount for eligible recurring charges ( 23c x 23d):</b> \$4,221.60			
<b>23f. Annual non-recurring (one-time) charges:</b> \$0.00			
<b>23g. Ineligible non-recurring amt.:</b> \$0.00			
<b>23h. Annual pre-discount amount for eligible non-recurring charges ( 23f - 23g):</b> \$0.00			
<b>23i. Total program year pre-discount amount ( 23e + 23h):</b> \$4,221.60			
<b>23j. % discount (from Block 4):</b> 78			
<b>23k. Funding Commitment Request ( 23i x 23j):</b> \$3,292.85			

I filed a second 470 that first year because I was **also** applying for tariffed services that did not have “existing, binding contracts,” and I understood that I needed to file a 470 that did not have the Block 3, #10 checked on it to cover those services.

I did not report the CCIT Internet service contract on a 470 after the initial year (Year 1) because of the second clause of the following bold print instructions:

**NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.**

So, for instance, on the Year 2 Form 470, Block 3 #10 had the same language as Year 1: “Check if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s).” Cochise County considered the CCIT contract to be an existing, binding contract, but we were also seeking discounts on tariffed services on this Form 470, so I did **not** check the box. A copy of this page from Year 2 Form 470 is Attachment #3.

Attachments # 4, 5, and 6 are copies of Block 2, #7 from the 470s I submitted for Year 3 through 5.

The SLD letters of October 25 state that the CCIT contract “expired on December 17, 1997.” When I filed these 470s, I did not think that this CCIT contract ever “expired” on its own. My governing board, the Cochise County Board of Supervisors, does not require an annual renegotiation of the CCIT contract. Opinions from the Arizona Attorney General support my conclusion that a contract that automatically renews without any action by the parties is tantamount to a multi-year contract. The Arizona Attorney General stated with respect to rights of way that “A perpetual term right of way would be one where the term continues indefinitely or where the applicant has an unlimited ability to obtain automatic renewals.” Ariz. Atty Gen. Op. I88-005. (emphasis added.) The Attorney General also opined that a lease-purchase agreement may be construed as creating an obligation that would run afoul of a school’s annual debt limit if the lease-purchase agreement obligates the school district for more than one year or “is structured to compel automatic renewal.” Ariz. Atty Gen. Op 76-6.

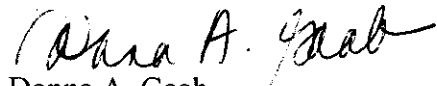
I considered the CCIT contract to be a multi-year contract and also an “existing” contract---it renews automatically, and it does not “expire” unless terminated. And as the bold print above instructs, “**...a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do(es) NOT require filing of a Form 470.**” Although I realize now that my interpretation of this bold instruction was not in accord with the SLD rules, and that the SLD does not consider the ongoing, automatically-renewing contract with CCIT as a multi-year contract that does not require the posting of a 470, at the time that I was filling out those forms 470 for Years 2

contract (Attachment #1) indicating that I faxed the contract to the SLD at their request on 5/5/00 to someone named Pina and on 3/25/02 to someone named Mike. No one from SLD ever mentioned to me that there might be a problem about not posting this contract on the current year's 470. My funding requests for the CCIT contract were approved both years. Since I continued to get e-rate funding for this contract each year, I reasonably concluded that the review team had decided both times that my applications were in order.

I have been grateful for the opportunity to apply for e-rate discounts for our libraries. The discounts have allowed us to share resources and serve customers much more economically than we could have without discounts. I have filed each year in good faith and I have certainly not deliberately made a mistake or tried to sidestep SLD rules.

I respectfully request that the FCC reverse the SLD decision to rescind the more than \$14,000 in discounts on our CCIT bills for years 2 through 5. I am the person authorized to sign this appeal, and you may reach me at the address, phone, and fax number printed on the first page of this letter, or at [dgaab@co.cochise.az.us](mailto:dgaab@co.cochise.az.us).

Sincerely,

  
Donna A. Gaab  
Director

c: Jody Klein, Cochise County Administrator  
Ann Littrell, Deputy County Attorney, Cochise County  
Nora Brown, CCIT Financial Management Services  
The Honorable John McCain, U.S. Senate  
The Honorable Jim Kolbe, U.S. House of representatives

FCC Appeal 12/17/04: ATTACHMENT #1

INTERGOVERNMENTAL AGREEMENT

This Agreement is made pursuant to Arizona Revised Statutes § 11-951, et. seq., between the Arizona Board of Regents on behalf of The University of Arizona, hereinafter called the UofA, and Cochise County Library District, hereinafter called Subscriber.

The Arizona Board of Regents on behalf of The University of Arizona is authorized to enter into this Agreement pursuant to Arizona Revised Statute § 15-1625. Subscriber is authorized to enter into this Agreement pursuant to Arizona Revised Statute § 48-3902.

This Agreement shall be in effect upon filing with the Secretary of State. This Agreement shall remain in effect for one year and shall be automatically renewed for additional one year terms unless terminated in accordance with Paragraph 7 of Attachment One, which is attached to and incorporated into this Agreement.

ARIZONA BOARD OF REGENTS  
ON BEHALF OF  
THE UNIVERSITY OF ARIZONA

Corrine A. Splitt  
Corrine A. Splitt  
Contracting Officer  
Date: 12/17/96

SUBSCRIBER:  
COCHISE COUNTY LIBRARY DISTRICT

By: Leslie E. Thompson  
Print Name: Leslie E. Thompson  
Title: Chairman  
Date: 12-02-96

The undersigned has determined that the foregoing Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Subscriber.

Dated this 27<sup>th</sup> day Nov., 1996.

NO. <u>21271</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>12/23/96</u>
<u>James Lee Hull</u> Secretary of State
By <u>Vicky L. Lennard</u>

By P. Dill  
Counsel

*filed all of this  
to SLD - Mike  
5/15/00*

*3/25/02 filed  
original contract  
to SLD - Mike*

BISBEE	AZ	85603	
Telephone number Ext:		E-mail Address	
(520) 4329250			
6. Contact Person's Name: Donna A. Gaab, Director			
Street Address, P.O.Box, or Route Number (if different from Item 5)			
Street:			
City:	State	Zip Code 5Digit:	Zip Code 4Digit:
Fill in all of the following (if available), and check the preferred mode of contact:			
<input checked="" type="radio"/> Telephone Number Ext:	<input checked="" type="radio"/> Fax Number Ext:	<input checked="" type="radio"/> E-mail address:	<input type="radio"/> Mail:
(520) 4329250	(520) 4327339	dgaab@cochisecold.lib.az.us	

**Block 2: Other Characteristics Of Applicant**

7a. Number of students:	7b. Number of library patrons:
	105000
8. Number of buildings to be served:	9. Number of rooms to be served:
13	25

**Block 3: Summary Description of Needs or Services Requested**

10. <input checked="" type="checkbox"/> Check if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s) and proceed to Block 4.				
Sequence #	Date Contract Signed	Contract Termination Date		
15515	11/13/1996	11/13/2001		
15516 <i>VoA CCIT</i>	12/17/1996	12/17/1998		
15517	11/04/1996	11/04/2001		
11. <input type="checkbox"/> Check here if you have a Request for Proposal(RFP) available. If RFP is posted on a website, provide the website address				
(1)	(2)	(3)	(4)	(5)
	Existing Services	Additional Services Desired	Total Services Desired	Details (Optional)
12. Telecommunications Services				
a. Number of phones that have or require service (See instructions concerning extension phones and fax machines.)				

*Year 1*  
470# 128020000069261

## Block 3: Summary Description of Needs or Services Requested

10. ☐ Check if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s) and proceed to Block 4.

Sequence # \_\_\_\_\_ Date Contract Signed \_\_\_\_\_ Contract Termination Date \_\_\_\_\_

11. ☐ Check here if you have a Request for Proposal(RFP) available. If RFP is posted on a website, provide the website address \_\_\_\_\_

(1)	(2) Existing Services	(3) Additional Services Desired	(4) Total Services Desired	(5) Details(Optional)
<b>12. Telecommunications Services</b>				
a. Number of phones that have or require service (See instructions concerning extension phones and fax machines.)	5	0	5	phone, fax, and phone/fax lines at some branches and Library District
b. Number of computers that have or require service	55	0	55	PCs at 13 sites are connected to frame relay network to access both the Internet and the shared DRA online system, including Web catalog
c. Number of high bandwidth video conferencing links				
d. Specify other (Optional)	6	0	6	T1 at central site and 56Kb circuits at branches and Library District
<b>13. Internal Connections</b>				
a. Number of buildings with at least some rooms connected	13	0	13	Details
b. Number of rooms connected	25	0	25	
c. Highest Speed of connection				
d. Specify other (Optional)				
<b>14. Internet Access</b>				
a. Number of dial up connections necessary				Details
b. Highest speed of dial up connections				
c. Number of direct connections necessary	1	0	1	
d. Highest speed of such direct connections	256Kb			
e. Specify other (Optional)				

15. You may provide additional summary information about the services you are requesting to help service providers identify your needs more precisely. You may provide technical requirements or give an informal description of your telecommunications-related goals.

16. ☒ Check here if there are any restrictions imposed by state or local laws or regulations on how and when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures. You may attach restrictions or give website where they are posted.

County policy: generally, purchases up to \$500 require no quote. Between \$500 and \$3,000, 3 verbal quotes. Between \$3,000 and \$10,000, 3 written quotes. Over \$10,000, go to bid. Exception: sole source purchases.

17. Purchases in future years: If you have current plans to purchase additional services in future years, describe them below (Providing this information is optional.)

## Block 4: Technology Assessment

18. Although the following services and facilities are ineligible for support, they are usually necessary if schools and libraries are to make effective use of the eligible services requested in this application.

(If your application is only for basic voice telephone service, check this box)

YEAR #2  
470# 830720000171560

**FCC Form 470**

Universal Service Program Description of Services Requested and Certification Form

Approval by OMB  
3060-0806Entity Number: 143066  
Contact Person: Donna A. GaabApplicant's Form Identifier: grateful  
Phone Number: 520-432-9250

## Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):	
a. <input checked="" type="checkbox"/>	Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.
b. <input type="checkbox"/>	Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.
c. <input type="checkbox"/>	Services for which a new written contract is sought for the funding year in Item 2.
d. <input type="checkbox"/>	A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.
NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.	

*UofA*

&lt;&lt; Previous

Reset

Next &gt;&gt;

Copyright 1997  
Schools and Libraries Division.

YEAR 3  
470# 515930000 265905



**FCC Form 470**

Universal Service Program Description of Services Requested and Certification Form

Approval by OMB  
3060-0806Entity Number: 143066  
Contact Person: Donna A. GaabApplicant's Form Identifier: year4  
Phone Number: 520-432-9250

## Block 2: Summary Description of Needs or Services Requested

<b>7 This Form 470 describes (check all that apply):</b>	
a. <input checked="" type="checkbox"/>	Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.
b. <input type="checkbox"/>	Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.
c. <input type="checkbox"/>	Services for which a new written contract is sought for the funding year in Item 2.
d. <input type="checkbox"/>	A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.
<b>NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.</b>	

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Schools and Libraries Division.YEAR 4  
FORM 470# 404830000324423

# FCC Form 470

Universal Service Program Description of Services Requested and Certification Form



Approval by OMB  
3060-0806

Entity Number: 143066  
Contact Person: LOUISA GARCIA

Applicant's Form Identifier: YEAR5  
Phone Number: 520-432-9250

## Block 2: Summary Description of Needs or Services Requested

<b>7 This Form 470 describes (check all that apply):</b>
a. <input checked="" type="checkbox"/> Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.
b. <input checked="" type="checkbox"/> Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.
c. <input checked="" type="checkbox"/> Services for which a new written contract is sought for the funding year in Item 2.
d. <input type="checkbox"/> A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.
<b>NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.</b>



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Schools and Libraries Division.

YEAR 5  
470# 105660000396736

Contact Person's Name DONNA A. GAAB and Phone Number: 520-432-9250

**Block 5: Services Ordered**

15. "Shared" services: All EXCEPT site-specific, internal connections and dedicated ("private line") connections from only one school or library to an ISP or other end-user.

(1)	(2)	CONTRACT			(6)	(7)	Amount			(11)
SLC Service Provider Number or Full Legal Name of Service Provider	Universal Service Control Number for Form 470 on which this is based	(3) Contract Number (if applicable)	(4) Award Date	(5) Expiration Date	Services or Products	Service Start Date	(8) Estimated One Time Pre-discount Cost	(9) Estimated Monthly Pre-discount Cost	(10) Estimated Total Annual Prediscount Cost	Percentage Discount (from Item 14)
UNIV. OF AZ CCIT 143010150	83072 00001 71560				Telecommunication Services					
		21271	12/17/1996	on-going	Internet Access Districtwide PVC 250K	07/01/1999		\$ 351	\$4,212	79 81%
					Internal Connections (Shared)					

YEAR 2  
471 # 135658  
FRN # 203031

**Cochise County Library District**DRAWER AK  
BISBEE, ARIZONA 856034/23/99  
Richard Nyquist (SLC)  
973-884-8237

March 4, 1999

Letter of Inquiry  
Schools & Libraries Division  
Box 125 - Correspondence Unit  
100 South Jefferson Road  
Whippany, NJ 07981

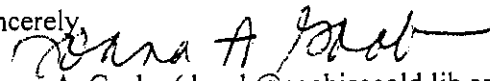
Dear SLC:

I am writing in regard to the application of **Cochise County Library District** (application number 0000074285, billed entity number 143066). The FRN is 0000079173.

When I submitted my 471 last spring, I made an error on this line number. I stated that the termination date of this contract (for Internet access from the University of Arizona) was 12/17/98. In fact, the contract was originally signed on 12/17/96 and "shall remain in effect for one year and shall be automatically renewed for additional one year terms unless terminated...."

I realize now that I should not have stated a termination date, and I also realize that because I did, the SLC did not add the 6-month extension funds to this line. However, I am not appealing this issue. I am prepared to be happy with 12 months of discount, rather than 18, for the 1998 year, and to fill out my 471 for 1999 correctly, so that at least next year, we get the correct reimbursement. **My first question is: on the 471: how do I indicate that a contract has no termination date?** — Richard says we end of funding per. Also, he says he will arrange for us to get 1st 6 mo of 1999 - UFA (see Tenth Order 4/2/99)  
I also want to go on record that my monthly payments to this vendor increased twice during 1998, after I filed my 471. The first increase was an additional \$50 a month, when we upped the PVC from 56K to 128K, an increase which was allowed by the original contract. The second increase added another \$100 a month, when we went from 128K to 256K; this increase was covered by an amendment to the original contract.

My second question is: if we need to increase the bandwidth again in 1999, beyond what I state for this line in my 471, is there a way for me to inform the SLC of the increases and get my funding commitment correspondingly increased? Again, I am not appealing for 1998. In all honesty, I don't think I have time to deal with an appeal. I am using the original amount I indicated on my 471 (rather than the total of actual bills) in column 14 of the BEAR form. However, I would like to know how to handle this if I have increases in the future. — NO

Sincerely,  
  
Donna A. Gaab (dgaab@cochisecold.lib.az.us)  
Director

c: Nora Brown, CCIT Financial Management Services, University of Arizona